

90-15

3580-00006

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Bucks War Sup

1  
2 UNITED STATES  
3 ENVIRONMENTAL PROTECTION AGENCY  
4 REGION 9

5 In the Matter of :

6 Buck's War Surplus  
7 4965 E. Geist Street  
8 Las Vegas, Nevada, 89115

9 Buck's War Surplus  
10 and Mr. Harold W. Buck

11 Respondents

12 Proceeding under Section 106 of the  
13 Comprehensive Environmental Response,  
14 Compensation and Liability Act of 1980,  
15 as amended by the Superfund Amendments  
16 and Reauthorization Act of 1986,  
17 (42 U.S.C. Section 9606).

Order No. 90-15

18 I. Jurisdiction

19 This Order is issued to Buck's War Surplus and Mr. Harold W.  
20 Buck ("Respondents") pursuant to the Comprehensive Environmental  
21 Response, Compensation and Liability Act of 1980, as amended by  
22 the Superfund Amendments and Reauthorization Act of 1986  
23 ("CERCLA"), 42 U.S.C. 9601, et seq., by authority delegated to  
24 the Administrator of the United States Environmental Protection  
25 Agency ("EPA"), and redelegated to the EPA Regions.

26 The Director of the Hazardous Waste Management Division, EPA  
27 Region 9, has determined that there may be an imminent and sub-  
28 stantial endangerment to the public health or welfare or the en-  
vironment because of the release or threatened release of  
hazardous substances from Buck's War Surplus, 4965 East Geist

1 Street Las Vegas, Clark County, Nevada ("the Site" or "the  
2 facility").

3 The EPA has designated an On-Scene Coordinator ("OSC") for  
4 the site, pursuant to 40 C.F.R. Part 300.

5

6 **II. Findings of Fact**

7 **BACKGROUND**

8 A. The Buck's War Surplus Site at 4965 East Geist St. oc-  
9 cupies approximately ten acres, of which approximately two and  
10 one half acres are in use. The Site consists of a small work  
11 shed and a large outside storage area. A wood, concrete, and  
12 wire fence surrounds most of the area in use. A small mobile  
13 housing trailer and a few military surplus goods are located out-  
14 side the fence. Business documents and records are kept at Mr.  
15 Buck's residence at 45 N. Lailani, Las Vegas. The Site lies ap-  
16 proximately one half mile south of Nellis Air Force Base and  
17 several other commercial establishments.

18 B. On-Site are approximately two thousand (2000) containers  
19 of the one to five gallon size which contain military surplus  
20 reagents, paints, oils and various other chemicals. Also present  
21 at the Site are approximately three hundred (300) 55-gallon drums  
22 containing oils, greases and unknown compounds. Most of the On-  
23 Site containers bear markings which indicate that they are  
24 military surplus goods.

25 C. The Site is owned by Mr. Harold W. Buck. It appears  
26 that there are no other owners. Mr. Buck's son, John Buck, as-  
27 sists his father's operation. Buck's War Surplus operated on the  
28 Site as a military surplus retailer from 1962 until June, 1990.

1 In 1979, a major fire occurred at the Site which destroyed much  
2 of Buck's War Surplus inventory and allegedly left the business  
3 in financial ruin. Mr. Buck has alleged that there is no in-  
4 surance coverage for the property or the business. Mr. Buck has  
5 also alleged that he has no other financial assets.

6 D. On May 3, 1990, the Nevada Division of Environmental  
7 Protection ("NVDEP") conducted a Site visit. The inspectors  
8 found a large amount of assorted materials, including military  
9 surplus nets, supply boxes and debris. In addition, the inves-  
10 tigators discovered more than two thousand (2,000) various sized  
11 drums and containers filled with a variety of chemicals. A large  
12 number of these drums were leaking, rusty, and without labels,  
13 and were stored incompatibly.

14 E. On May 30, and 31, 1990, the NVDEP conducted two Inter-  
15 agency meetings to discuss the Site. In attendance at the meet-  
16 ings were members of the NVDEP, the Clark County Health Depart-  
17 ment, the Clark County Fire Department, the Las Vegas Police  
18 Department, the Clark County District Attorney's Office, the  
19 Federal Bureau of Investigation, the Department of Defense Office  
20 of Inspector General and EPA Emergency Response Section ("ERS").  
21 The Interagency members agreed that the Site may pose an imminent  
22 and substantial threat to the public due to the release or poten-  
23 tial releases of potentially hazardous substances from the Site.  
24 EPA ERS agreed to conduct a Site Preliminary Assessment, in con-  
25 junction with the Clark County Fire Department, in order to as-  
26 sist with both Clark County's Fire Department Clean-up Order and  
27 NVDEP's Hazardous Waste Removal Order.

28 F. On June 11, 1990, the Clark County Fire Department

1 served a warrant on Mr. Buck to enter both his residence and the  
2 Site. EPA On-Scene-Coordinator Bob Bornstein, along with Bill  
3 Weis, ERS Enforcement Investigator, and three members of the  
4 Technical Assistance Team conducted a Preliminary Assessment at  
5 the Site. Preliminary data indicates the presents of corrosive,  
6 alkaline, ignitable, flammable, and water reactive compounds.  
7 Samples were taken and laboratory analysis is presently being  
8 conducted. Several of the sampled drums were in poor condition  
9 and leaking onto bare soil. Soil staining from materials which  
10 had apparently previously spilled or leaked from the containers  
11 was observed in many locations.

12 G. Following the Preliminary Assessment, the Clark County  
13 Fire Department issued an Order to Buck's War Surplus to clean-up  
14 the Site and bring it into compliance with the County Fire Codes.  
15 Mr. Buck informed David Faircloth, Fire Inspector, that he was  
16 financially unable to comply with the Fire Department Order. In  
17 addition, the Nevada Division of Environmental Protection (NVDEP)  
18 issued Buck's War Surplus a Hazardous Waste Clean-up Order. On  
19 June 12, 1990, Mr. Buck informed Alene Coulson, NVDEP, that he  
20 would not be able to perform the required tasks.

21 ENDANGERMENT

22 H. Several contamination threats were identified by EPA  
23 during its assessment of the Site. The improper storage of leak-  
24 ing containers of incompatible hazardous substances creates a  
25 serious threat of explosion and/or fire. A fire at the Site  
26 would cause the release of potentially toxic fumes and poten-  
27 tially affect workers at neighboring industries and military per-  
28 sonnel stationed at Nellis Air Force Base. Releases of chemicals

1 On-Site from the numerous leaking containers may adversely impact  
2 the regional groundwater which is used for both domestic and in-  
3 dustrial purposes. Depth to groundwater beneath the site is es-  
4 timated to be approximately 100 feet.

5 I. Endangered species which inhabit the Las Vegas area are  
6 the desert tortoise and the desert fox, protected animals under  
7 the Endangered Species Act of 1973 (listed April 2, 1990).

8 Releases from the Site may adversely effect these endangered  
9 species. Any release from this facility would also have a sig-  
10 nificant impact on the delicate desert ecology.

## 11 12 II. Conclusions of Law

13 A. The respondents are "persons" as defined in Section  
14 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

15 B. The property located 4965 E. Geist, Las Vegas, Nevada,  
16 is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.  
17 Section 9601(9).

18 C. The corrosive substances, ignitable substances, and  
19 water reactive compounds currently present at the Site are  
20 "hazardous substances" as term is defined in Section 101(14) of  
21 CERCLA, 42 U.S.C. Section 9601(14).

22 D. The presence of hazardous substances on the Site and the  
23 potential for those substances to leak, mix, ignite and migrate  
24 constitutes a "release" or "threatened release" of hazardous sub-  
25 stances into the environment as defined in Section 101(22) of  
26 CERCLA, 42 U.S.C. Section 9601(22).

27 E. Respondents are "responsible parties" as defined in Sec-  
28 tion 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3).

1

#### IV. Determinations

2

Based on the Findings of Fact and Conclusions of Law, the Director, Hazardous Waste Management Division, EPA Region 9, has made the following determinations:

5

A. The release or threatened release of hazardous substances and pollutants or contaminants from the Site may present an imminent and substantial endangerment to the public health, welfare, and the environment.

9

B. In order to prevent or mitigate immediate and significant risk of harm to human health and the environment, it is necessary that actions be taken immediately to contain and prevent the release and potential release of hazardous substances, pollutants or contaminants from the Site.

14

C. The removal measures required by this Order are consistent with the National Contingency Plan, 40 Code of Federal Regulations, Part 300.

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18

#### V. Order

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Based upon the Findings of Fact, Conclusions of Law and Determinations, EPA HEREBY ORDERS the Respondents to implement the following measures under the direction of EPA's On-Scene Coordinator.

23

A. Within seventy-two (72) hours of the effective date of this Order, Respondents shall submit in writing to EPA, the Nevada Division of Environmental Protection, and the Clark County Fire Department, a Site Security Plan. The Site Security Plan shall be submitted for EPA review and approval and shall include provisions for: installment of a secure perimeter fence around

1 all used areas of the Site, encompassing all drums, debris and  
2 stained soil; the posting of Hazardous Substance warning signs  
3 along the fence; and provision of twenty-four (24) hour guard  
4 service. If EPA provides comments on the Site Security Plan,  
5 Respondents shall incorporate all of EPA's comments and resubmit  
6 the plan within two (2) calendar days of receiving any such EPA  
7 comments. Upon EPA approval of the Site Security Plan, Respon-  
8 dents shall commence implementation.

9 B. Within seven (7) calendar days of the effective date of  
10 this Order, Respondents shall submit in writing, for EPA review  
11 and approval, a Site Health and Safety Plan. The Site Health and  
12 Safety Plan must conform to the requirements outlined in the  
13 Standard Operating Safety Guide, U.S. EPA, Office of Emergency  
14 and Remedial Response Support Division, Edison, New Jersey,  
15 November 1984, updated July 1988. All work conducted pursuant to  
16 this Order shall conform with the approved Site Health and Safety  
17 Plan and all applicable Occupational Safety and Health Ad-  
18 ministration (OSHA) regulations. If EPA provides comments on the  
19 Site Health and Safety Plan, Respondents shall incorporate all of  
20 EPA's comments and resubmit the plan within five (5) calendar  
21 days of receiving any such EPA comments.

22 C. Within fourteen (14) calendar days of the effective date  
23 of this Order, Respondents shall submit in writing, for EPA  
24 review and approval, a Site Removal and Stabilization Plan and  
25 Schedule ("Workplan"). The Workplan shall include provisions for  
26 the following activities to be completed within the timeframes  
27 set forth:

28 1) Within one hundred and twenty (120) calendar days  
of the effective date of this Order, all hazardous

1 substances currently stored on-Site shall be  
2 removed from the Site and sent to EPA approved  
3 hazardous waste storage, treatment, disposal,  
4 recycling and/or reutilization facilities;

- 5 2) Within one hundred and twenty (120) calendar days  
6 of the effective date of this Order, all stained  
7 and contaminated soil at the Site shall be  
8 excavated and removed from the Site and sent to an  
9 EPA approved hazardous waste storage, treatment,  
10 disposal, recycling and/or reutilization facility;

11 If EPA provides comments on the Workplan, Respondents shall in-  
12 corporate all of EPA's comments and resubmit the plan within five  
13 (5) calendar days of receiving any such EPA comments. Upon EPA  
14 approval of the Workplan, Respondents shall commence implementa-  
15 tion. The EPA approved Workplan shall be incorporated into this  
16 Order and shall be enforceable under the terms of this Order.  
17 The Workplan shall be in accordance with appropriate EPA  
18 guidances and those directed for use by the OSC.

19 D. Within thirty (30) days of the effective date of this  
20 Order, Respondents shall submit in writing, for EPA review and  
21 approval, a plan for post-removal soil sampling ("Sampling Plan")  
22 to ensure that the Site has been adequately remediated. If EPA  
23 provides comments on the Sampling Plan, Respondents shall incor-  
24 porate all of EPA's comments and resubmit the plan within five  
25 (5) calendar days of receiving any such EPA comments. Post-  
26 removal soil sampling shall be conducted in accordance with the  
27 approved Sampling Plan and shall be performed no later than one  
28 hundred and thirty (130) days from the effective date of this Or-  
der. All sampling and analysis shall be consistent with the  
"Removal Program Quality Assurance/Quality Control Interim  
Guidance: Sampling, QA/QC Plan and Data Validation", EPA OSWER  
Directive 9360.4-01, dated February 2, 1989.

1 E. At the conclusion of the post-removal sampling ac-  
2 tivities, Respondents shall prepare a final report summarizing  
3 the work conducted pursuant to this Order. The final report  
4 shall contain copies of all hazardous waste manifests, notices of  
5 sales, and analytical data from the post-removal sampling. The  
6 final report shall be submitted to EPA no later than one hundred  
7 and seventy five (175) days from the effective date of this Or-  
8 der.

9 F. During the implementation of the Workplan and the Sam-  
10 pling Plan, Respondents shall provide written weekly summary  
11 reports to EPA, the Nevada Division of Environmental Protection  
12 and the Clark County Fire Department. These weekly reports shall  
13 contain a summary of the previous week's activities and planned  
14 up-coming events.

15 G. Respondents shall provide notice to EPA, the Nevada  
16 Division of Environmental Protection and the Clark County Fire  
17 Department forty-eight (48) hours prior to performance of any  
18 On-Site work.

19

20 VI. Compliance With Other Laws

21 Respondents shall comply with all federal, state and local  
22 laws and regulations in carrying out the terms of this Order.  
23 All hazardous substances removed from the facility must be  
24 handled in accordance with the Resource Conservation and Recovery  
25 Act of 1976, 42 U.S.C. Section 6921, et seq., the regulations  
26 promulgated under that Act, and Section 121(d)(3) of CERCLA, 42  
27 U.S.C. Section 9621(d)(3).

28

1                                **VII. On-Scene Coordinator**

2            EPA has appointed an On-Scene Coordinator (OSC) for the Site  
3    who has the authority vested in the On-Scene Coordinator by 40  
4    C.F.R. Part 300, et seq. The On-Scene Coordinator for the Site  
5    for the purposes of this Order is:

6            Robert Bornstein  
7            Emergency Response Section, H-8-3  
8            U.S. Environmental Protection Agency  
9            1235 Mission Street  
             San Francisco, CA 94103  
             (415) 744-1026

10                              **VIII. Submittals**

11           All submittals and notifications to EPA required by this Or-  
12    der or any approved proposal under this Order concerning  
13    Harold W. Buck and Buck's War Surplus, et al., Order number 90-  
14    15, shall be made to:

15           Jerry Clifford  
16           Deputy Director, Superfund, H-5  
17           U.S. Environmental Protection Agency  
             1235 Mission Street  
             San Francisco, California 94103

18    Copies of all submittals and notifications shall be sent to the  
19    On-Scene Coordinator.

20           All approvals and decisions of EPA made regarding the sub-  
21    mittals and modifications shall be communicated to Respondents by  
22    the Deputy Director, Superfund or his designee. No informal ad-  
23    vice, guidance, suggestions, or comments by EPA regarding  
24    reports, plans, specifications, schedules, or any other matter  
25    will relieve Respondents of their obligation to obtain formal ap-  
26    provals as required by this Order.

1 **IX. Access**

2 Respondents shall provide EPA employees and other represen-  
3 tatives with complete access to the facility at all times. Noth-  
4 ing in this Order limits any access rights that EPA or other  
5 agencies may have pursuant to law.  
6

7 **X. Endangerment During Implementation**

8 The OSC may determine that acts or circumstances (whether  
9 related to or unrelated to this Order) may endanger human health,  
10 welfare or the environment and may order the Respondents to stop  
11 further implementation of this Order until the endangerment is  
12 abated.  
13

14 **XI. Government Not Liable**

15 The United States Government and its employees and other  
16 representatives shall not be liable for any injuries or damages  
17 to persons or property resulting from the acts or omissions of  
18 Respondents, their employees or other representatives caused by  
19 carrying out this Order. For the purposes of this Order, the  
20 United States Government is not a party to any contract with the  
21 Respondents.  
22

23 **XII. Noncompliance**

24 A. A willful violation or failure or refusal to comply with  
25 this Order may subject Respondents to a civil penalty of up to  
26 \$25,000 per day in which the violation occurs or failure to  
27 comply continues, pursuant to the provisions of Section 106(b)(1)  
28 of CERCLA, 42 U.S.C. Section 9606(b)(1). Failure to comply with

1 this Order without sufficient cause may also subject Respondents  
2 to punitive damages of up to three times the total costs incurred  
3 by the United States for site response pursuant to Section  
4 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

5 B. EPA may take over the response action at any time if EPA  
6 determines that Respondents are not taking appropriate action.  
7 EPA may order additional actions it deems necessary to protect  
8 public health, welfare, or the environment.

9  
10 **XIII. Opportunity to Confer**

11 Respondents may request a conference with the Deputy Direc-  
12 tor, Superfund, EPA Region 9, or his staff to discuss the provi-  
13 sions of this Order. At any conference held pursuant to Respon-  
14 dents' request, Respondents may appear in person or by counsel or  
15 other representatives for the purpose of presenting any objec-  
16 tions, defenses or contentions which Respondents may have regard-  
17 ing this Order. If Respondents desire such a conference, Respon-  
18 dents must make a request orally within 24 hours of receipt of  
19 this Order, and confirm the request in writing immediately. A  
20 conference does not alter the effective date of the Order.

21  
22 **XIV. Parties Bound**

23 This Order shall apply to and is binding upon the Respon-  
24 dents, their officers, directors, agents, employees, contractors,  
25 successors, and assigns.

26  
27 **XV. Notice of Intent to Comply**

28 Within seventy-two (72) hours of receipt of this Order,

1 Respondents shall orally inform EPA of their intent to comply  
2 with the terms of this Order. The oral notice shall be confirmed  
3 within two days by written notice to the Director. Failure to  
4 punctually notify EPA of the Respondents' intent to fully comply  
5 will be construed by EPA as a refusal to comply.

6

7

**XVI. Notice to State**

8 Notice of the issuance of this Order has been given to the  
9 State of Nevada and Clark County. EPA will consult with the  
10 Nevada Division of Environmental Protection and Clark County, as  
11 appropriate.

12

13

**XVII. Effective Date**

14 Notwithstanding any conferences requested pursuant to the  
15 provisions of this Order, this Order is effective upon receipt by  
16 the Respondents.

17

18 IT IS SO ORDERED on this 18 day of June, 1990.

19

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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by: Jeff Zelikson  
Jeff Zelikson, Director  
Hazardous Waste Management Division  
EPA, Region 9

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**Contacts:**

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